



Commonwealth of Massachusetts State Ethics Commission

One Ashburton Place, Room 619, Boston, MA, 02108
phone: 617-727-0060, fax: 617-723-5851



CONFLICT OF INTEREST OPINION EC-COI- 83-138

FACTS:

Since August 1, 1983, you have been employed on a full-time weekday basis as a social worker in the ABC office of the Department of Social Services (DSS). Your hours of work are 7:30 a.m. to 6 p.m. on Monday, Tuesday and Wednesday, and 1 p.m. to 5:30 p.m. on Thursday and Friday. Outside of your normal DSS working hours, you are employed by DEF, a private non-profit corporation which contracts with the Department of Mental Health (DMH) to provide a group residence for individuals placed by DMH. In your position as house director, you are responsible for the day to day management of the home. You are paid by DEF for forty hours of work pursuant the following schedule:

11 p.m. - 9 a.m. Wednesday, Thursday and Friday
9 a.m. - 12 noon Thursday,
3 1/2 hours Saturday
3 1/2 hours Sunday

The majority of your compensation from DEF is derived from the group residence contract with DMH.

QUESTION:

Does G.L. c. 268A permit you to continue your dual employment arrangement with DSS and DEF?

ANSWER:

Yes, although your hours of weekday employment with DEF must be modified.

DISCUSSION:

As a full-time DSS social worker, you are a state employee within the meaning of G.L. c. 268A, Section 1(q) and are therefore subject to the restrictions of G.L. c. 268A. In particular, under the first paragraph of G.L. c. 268A, Section 7, you are prohibited from having a financial interest in a second contract made by a state agency. Your compensation as house director for DEF would constitute a financial interest under Section 7 because the majority of your compensation is derived from DEF's contract with DMH, a state agency.

The flat prohibition of the first paragraph of Section 7 has been tempered somewhat by statutory exemptions which permit state employees to have a financial interest in a second state contract provided that certain safeguards are satisfied. In particular, one exemption would be relevant to your situation. This exemption, created by St. 1982, c. 612, appears in the final paragraph of Section 7 and provides as follows:

This section shall not prohibit a state employee from being employed on a part-time basis by a facility operated or designed for mental health care, public health, correctional facility or any other facility principally funded by the state which provides similar services and which operates on an uninterrupted and continuous basis; provided that such employee does not participate in, or have official responsibility for, the financial management of such facility, that he is compensated for such part-time employment for not more than four hours in any day in which he is otherwise compensated by the commonwealth, and at a rate which does not exceed that of a state employee classified in step one of job group XX of the general salary schedule contained in section forty-six of chapter thirty.

In previous opinions the Commission has concluded that DMH-funded group residences such as that run by DEF constitute eligible facilities for the purpose of this exemption. See, EC-COI-83-73. Inasmuch as you do not participate in or have official responsibility for the financial management of DEF as a DSS employee, and are paid at a rate which does not exceed step one of job group XX, you qualify for eligibility under this exemption. However, you will be permitted to work only on a part-time basis for DEF and only for up to four hours in any day in which you are employed by the commonwealth. This limitation would not alter your existing weekend arrangement with DEF because you do not work for DSS on weekends. However, the four-hour ceiling will substantially affect your weekday arrangement with DEF which currently exceeds four hours daily on Wednesday, Thursday and Friday. You must conform your compensation schedule to conform to the requirements of Section 7 no later than thirty days from the receipt of this opinion.[1]

DATE AUTHORIZED: October 3, 1983

[1] No other exemptions under Section 7 would be applicable to your situation. Section 7 at (b) permits second contractual arrangements under limited circumstances where the contract has been acquired through public notice. However, your DEF contract would not satisfy the public notice requirement because you state that your employment with DEF originated through a word of mouth opportunity without public advertising or other methods designed to provide equal access to the position for the general public. See EC-COI-83-95.